

## Weaver, Ashley

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**From:** F. Christopher Austin <caustin@weidemiller.com>  
**Sent:** Wednesday, December 20, 2017 2:19 PM  
**To:** Cavanagh, Matthew J.  
**Cc:** 'Rounds, Mike'; Cupar, David B.; Brian Prince; James Morris; Weaver, Ashley  
**Subject:** RE: NSixty v. uPost -- Jan. 5 settlement conference

Matthew:

Upост will consent to the Motion.

Chris

**F. Christopher Austin**  
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**From:** Cavanagh, Matthew J. [<mailto:mcavanagh@mcdonaldhopkins.com>]  
**Sent:** Wednesday, December 20, 2017 9:52 AM  
**To:** F. Christopher Austin <[caustin@weidemiller.com](mailto:caustin@weidemiller.com)>  
**Cc:** 'Rounds, Mike' <[MRounds@BHFS.com](mailto:MRounds@BHFS.com)>; Cupar, David B. <[dcupar@mcdonaldhopkins.com](mailto:dcupar@mcdonaldhopkins.com)>; Brian Prince <[bprince@weidemiller.com](mailto:bprince@weidemiller.com)>; James Morris <[JMorris@weidemiller.com](mailto:JMorris@weidemiller.com)>; Weaver, Ashley <[aweaver@mcdonaldhopkins.com](mailto:aweaver@mcdonaldhopkins.com)>  
**Subject:** RE: NSixty v. uPost -- Jan. 5 settlement conference

Chris,

I did not receive a response to my email below, and I just left a voice message at your office. Please call my office if you can so we can meet-and-confer on this issue.

Because of the upcoming holidays and the timing of the Court's deadlines, we cannot wait past 3:30 pm (EST) today to file the emergency motion. We had hoped that uPost would consent to the motion. We think it makes sense for all parties and the Court to postpone the settlement conference until after NSixty has received the critical discovery needed for the conference and we've done our best to try and settle by email and phone between us.

Regards,  
Matt

**Matt Cavanagh**  
Member

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**From:** Cavanagh, Matthew J.  
**Sent:** Monday, December 18, 2017 4:48 PM  
**To:** 'F. Christopher Austin'  
**Cc:** 'Rounds, Mike'; Cupar, David B.; Brian Prince; James Morris; Weaver, Ashley  
**Subject:** NSixty v. uPost -- Jan. 5 settlement conference

Chris,

We have reviewed uPost's written discovery responses and document production. There are two major takeaways: (i) they are woefully deficient, and (ii) uPost's revenues are less than what we would have expected based on the litigation expenses that you've incurred fighting the lawsuit for uPost. Also, uPost has not served its non-infringement, invalidity, and unenforceability contentions and accompanying document production, which were due on Friday 12/15.

We will be asking the Court to vacate the Jan. 5 settlement conference for two reasons:

1. We are missing critical discovery that NSixty needs for the settlement conference.
2. Because the revenues are relatively low, the parties should try to settle the dispute between themselves over the next month .

Please let us know immediately if you will consent to a joint motion to: (a) vacate the Jan. 5 conference, and (b) require a joint status report by Feb. 5 to advise the Court on status of settlement talks and the discovery dispute.

Because of the Dec. 29 deadline to serve mediation statements, the holidays, and the Jan. 5 conference, we will need to file an emergency motion by Wednesday, Dec. 20, if we cannot reach agreement. Therefore, please let me know if you are available tomorrow (12/19) for a meet-and-confer call on this issue.

Regards,  
Matt

**Matt Cavanagh**  
Member

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